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VIA HAND DELIVERY

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5823 (Club for Growth, Inc. and Club for Growth, Inc. PAC)

Dear Mr. Norton:

This office represents the Club for Growth, Inc. ("CFG" or "Club"), Club for Growth, Inc. PAC ("Club PAC"), and Pat Toomey, in his capacity as Treasurer of the Club PAC (together referred to as "Respondents"). On their behalf, we hereby respond to the complaint ("Complaint") the Federal Election Commission ("FEC" or "Commission") has designated Matter Under Review ("MUR") 5823.

The bulk of the Complaint (Counts I – IV) cross-references and reasserts allegations against the Club that the Commission already is pursuing in a de novo enforcement proceeding in the U.S. District Court for the District of Columbia. *FEC v Club for Growth*, Case No. 1:05-CV-01851 (RMU) (D.D.C.). In that case, the Commission asserts that the Club has improperly failed to register as a political committee or otherwise has made unlawful expenditures in connection with federal elections. The Club denies those charges, and the court will decide them. Opening a duplicative administrative matter would be pointless, inefficient, and unfair. Accordingly, this Response will not further address those issues.

The Complaint also makes a passing allegation that CFG and Club PAC coordinated with the Toomey campaign in Pennsylvania.

Thus, this Response also will not further address that claim.

The Complaint includes two other charges. First, it claims the Club used common vendors to coordinate with several campaigns. As we show below, the Complaint misconstrues the reports it relies upon, and the persons directly involved have provided sworn and circumstantial denials of any such coordination.

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The Complaint also challenges the independence and reporting of Club PAC's Internet expenditures. Again, these charges misconstrue reports that are explained by sworn affidavits that flatly deny the charges.

In short, the Commission should dismiss the bulk of the Complaint as redundant and, as to the rest, find no reason to believe the Club, Club PAC, or Mr. Toomey violated the Federal Election Campaign Act, as amended ("FECA").

THE COORDINATION CHARGE

Matt Marsden ("Complainant") filed the Complaint on September 25, 2006, on behalf of Schwarz for Congress, the authorized committee of losing primary candidate Joe Schwarz. Putting aside matters already in litigation, it makes various assertions of coordination.

The Complaint says that the Club coordinated with the Michigan campaign of Tim Walberg through (1) Club PAC's use of Red Sea, LLC ("Red Sea") for media services; (2) the Walberg campaign's use of Jamestown Associates ("Jamestown"); and (3) the use by CFG and the Walberg campaign of National Research, Inc. ("National Research"). Similarly, the Complaint alleges that CFG and Club PAC engaged in common vendor coordination with Sharron Angle in Nevada by using Red Sea and Jamestown and with Steve Laffey in Rhode Island by using Red Sea and Basswood Research. However:

- The Complaint, is devoid of any evidence that National Research did any work for CFG or Club PAC in Michigan in 2005 or 2006 or that Red Sea did any work for CFG or Club PAC in Nevada or Rhode Island.
- Moreover, the Complaint indicates that no ownership or similar relationship exists between Red Sea, National Research, and Jamestown.
- Instead, the Complaint alleges only that (i) Red Sea either has worked with or used Jamestown, and (ii) Adam Geller is presumably associated with National Research and used to work for Jamestown.

The Complaint also attacks certain Internet communications. Although the Complaint admits the communications are clearly marked as PAC independent

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expenditures, it alleges that either (1) the Club PAC "has not accounted for any such expenses as in-kind contributions" or (2) the Club paid for the communications and made prohibited corporate contributions, or (3) the Club failed to report its in-kind contributions. The only "fact" mentioned is that Club PAC did not report these Internet expenditures as contributions. The Complaint does not address, however, whether Club PAC reported them as independent expenditures – which is the case.

THE FACTS

CFG and Club PAC systematically exclude from CFG and Club PAC communications, discussions, projects, plans, and activities any consultants working for candidates that may be featured or mentioned in the planned communications or that are discussed. *See* Affidavit of David Keating, Executive Director of CFG, ¶¶ 8, 19, 23, attached hereto at Tab A [hereinafter "Keating Aff."]; Affidavit of Jon Lerner, Principal of Red Sea, ¶¶ 10, 17, attached hereto at Tab B [hereinafter "Lerner Aff."]; Affidavit of Adam Geller, Principal of National Research, ¶ 6, attached hereto at Tab C [hereinafter "Geller Aff."] (showing how CFG and Club PAC excluded consultants). Per CFG and Club PAC policy, all CFG and Club PAC communications are created and distributed independently of featured candidates, their opponents, and agents of the foregoing. *See* Keating Aff. ¶ 7.

CFG and Club PAC create their Internet communications in-house or through PJ Doland Web Design, which does not work for any candidates. Keating Aff. ¶ 6. Club PAC pays for all of its independent expenditures, including those made on CFG's website. Keating Aff. ¶¶ 25-27. Club PAC pays vendors directly and pays CFG for creating, hosting, and other costs related to such independent expenditures. *Id.* Club PAC makes payment to CFG in lump sums, using a draw-down ledger to ensure that advanced funds never drop below \$0 and to ensure that all costs are properly attributed to specific independent expenditures, etc. Keating Aff. ¶ 25. Club PAC timely and properly reports all of the costs related to its independent expenditures, including those made over the Internet. Keating Aff. ¶¶ 26-27. CFG does not pay for any of the PAC independent expenditures. Keating Aff. ¶ 25.

CFG in 2005 and/or 2006 disseminated communications to the public about issues relevant to the citizens of Michigan, Nevada, and Rhode Island and in some of those communications mentioned or featured federal candidates. Keating Aff. ¶¶ 3, 16, 20. Separately, Club PAC ran independent expenditures expressly

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advocating the election or defeat of candidates in Michigan, Nevada, and Rhode Island. Keating Aff. ¶¶ 4, 17, 21.

In Michigan, CFG or Club PAC used Red Sea for media and Red Sea (operating under the trade name Basswood Research) for polling. Keating Aff. ¶ 5. The Walberg campaign used National Research. Geller Aff. ¶ 5. Neither CFG nor Club PAC used Jamestown Associates or Adam Geller's National Research in Michigan. Keating Aff. ¶¶ 8, 29.

In Nevada, CFG or Club PAC used National Research for polling and Alfano-Leonardo and Media Ad Ventures for media. Keating Aff. ¶ 18. The Angle campaign used Jon Lerner, through Red Sea and Basswood Research. Lerner Aff. ¶ 8. Neither CFG nor Club PAC used Jamestown Associates, John Lerner, or Jon Lerner's Red Sea or Basswood Research in Nevada.¹ Keating Aff. ¶¶ 19, 29; Lerner Aff. ¶ 9.

In Rhode Island, CFG or Club PAC used National Research for polling; Warfield and Co. and Thompson Communication's Patrick Media for media; Advantage Inc. for telephone calls; and Bluepoint Consulting for direct mail. Keating Aff. ¶ 22. The Laffey campaign used Jon Lerner, through Red Sea and Basswood Research. Lerner Aff. ¶ 15. Neither CFG nor Club PAC used Jamestown Associates, John Lerner, or his Red Sea or Basswood Research in Rhode Island.² Keating Aff. ¶ 23, 29; Lerner Aff. ¶ 17.

Nowhere during 2006 did CFG or Club PAC engage Jamestown Associates as a vendor. Keating Aff. ¶ 29. Jon Lerner, Red Sea, Basswood Research, Adam Geller, and National Research have no control or participatory rights in Jamestown. Lerner Aff. ¶ 4; Geller Aff. ¶ 3. Adam Geller ceased working there in 2002. Geller Aff. ¶ 3. Red Sea sometimes makes use of personnel from Jamestown to place

¹ In early 2005—before Sharron Angle was a candidate—Red Sea conducted a poll in Nevada for CFG. The Angle campaign subsequently bought the poll results from CFG. Keating Aff. ¶ 19, Lerner Aff. ¶ 9.

² In early 2005 (before Steve Laffey was even a candidate), Jon Lerner discussed press speculation about possible Senate candidates with CFG personnel. Keating Aff. ¶ 23, Lerner Aff. ¶ 17. Before Red Sea was retained by the Laffey campaign, CFG also used Red Sea to create issue advertisements about President Bush's Social Security plan and about the death tax. These communications were disseminated in, among other places, Rhode Island, in February and July of 2005. Keating Aff. ¶ 23; Lerner Aff. ¶ 17.

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media buys, but did not use such personnel or Jamestown for CFG or Club PAC in Michigan in 2006. Lerner Aff. ¶ 4.

THE LAW

The core issue is whether certain communications were “coordinated communications.” “A payment for a coordinated communication is made for the purpose of influencing a Federal election, and is an in-kind contribution under 11 CFR 100 52(d) to the candidate . . .” 11 C.F.R. § 109.21(b)(1).

Pursuant to section 109.20 of the FEC’s regulations, “coordinated” means “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee or an agent of any of these entities.” Further,

A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication

- (1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;
- (2) Satisfies at least one of the content standards in paragraph (c) of this section; and
- (3) Satisfies at least one of the conduct standards in paragraph (d) of this section.

Id. § 109.21(a).

The content standards are not at issue in this Matter. The conduct standards are, however. The bulk of the coordination allegations rely on conduct that supposedly involved common vendors. The common vendor conduct standard requires several different factors to be present. Each factor is treated separately below.

Factor 1: Specified services within 120 days. First, the common vendor conduct standard applies to any commercial vendor, including any owner, officer, or

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employee of the commercial vendor, that has provided the following services to the candidate who is clearly identified in the covered communication or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing in the previous 120 days³:

- Development of media strategy, including the selection or purchasing of advertising slots;
- Selection of audiences;
- Polling;
- Fundraising;
- Developing the content of a public communication;
- Producing a public communication;
- Identifying voters or developing voter lists, mailing lists, or donor lists;
- Selecting personnel, contractors, or subcontractors; or
- Consulting or otherwise providing political or media advice.

Id §§ 109.21(d)(4)(i)-(ii). Media buyers that do not involve themselves in any of the above activities are not covered by the common vendor conduct standard. *See* 68 Fed. Reg. 421, 437 (Jan. 3, 2003) (Explanation and Justification on Coordinated and Independent Expenditures).

Factor 2: Specified information used or communicated. Second, the common vendor must use or convey to the person paying for the covered communication: i) information about the clearly identified candidate's campaign plans, projects, activities, or needs or his or her opponent's campaign plans, projects, activities, or needs; or ii) information used previously by the common vendor in providing services to the candidate who is clearly identified in the covered communication or his or her authorized committee, opponent or opponent's authorized committee, a political party committee, or agent of any of the foregoing. 11 C.F.R. § 109.21(d)(4)(iii).

³

Prior to July 10, 2006, the rule applied in the current election cycle

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Factor 3: Materiality. Finally, for both of the above types of information conveyed or used by the common vendor, "the information [must be] material to the creation, production, or distribution of the [covered] communication." *Id.* Because of this last requirement, the Commission does not consider the common vendor conduct standard to be a flat prohibition on the use of common vendors. *See* 68 Fed. Reg. at 436.

The relevant portions of the regulations relating to the other conduct standards are attached at Tab D.

DISCUSSION

I. This Matter Is an Inappropriate Forum for the Political Committee Allegations

As mentioned in the description of the Complaint above, the Complaint alleges that CFG is a political committee and should be registered with the FEC, subject to the PAC limits, etc. This very topic is the subject of federal court litigation in the United States District Court for the District of Columbia. *See FEC v Club for Growth, Inc*, Case No. 1:05-CV-01851 (RMU) (D.D.C.). In that case, the court will make its findings based on a de novo judicial record. As a result, we respectfully refrain from addressing this and related issues in this Matter because this Matter is an inappropriate forum for such discussions and because it would be inefficient to begin a new administrative proceeding with respect to a matter already in litigation. All discussions of this issue should be left to the pleadings in the District Court proceeding, and this Complaint should be dismissed with respect to those allegations.

II. CFG and Club PAC Did Not Coordinate Their Michigan Communications with the Walberg Campaign or Its Agents

The allegations contained in the Complaint about Michigan coordination are unfounded. CFG and Club PAC did not engage in any activities that constitute coordination, through common vendors or otherwise. They did not employ a vendor for Michigan that was common to a Michigan candidate, and the vendors involved on both sides did not pass on or use material campaign or communication information. This conclusion is supported by the sworn testimony from individuals with direct and personal knowledge of the activities that transpired, as discussed

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below.⁴ Without the conduct proscribed in 11 C.F.R. § 109.21(d), there can be no finding of coordination.

A. There Were no Common Vendors as Defined in 11 C.F.R. § 109.21(d)(4)(ii).

The common vendor conduct standard requires three prongs. Here, no vendor meets the first prong of the standard, 11 C.F.R. § 109.21(d)(4)(i)-(ii). Specifically, no CFG or Club PAC vendor also was a vendor to the Walberg campaign in the previous 120 days or otherwise.

Red Sea, in and of itself and through its polling trade business Basswood Research,⁵ only worked in Michigan in 2005 and 2006 for CFG and Club PAC. Lerner Aff. ¶¶ 4-5. Red Sea did not consult for or do any other work for the Walberg campaign or its agents. Lerner Aff. ¶ 5. As a result, Red Sea was not a vendor common to CFG/Club PAC and the Walberg campaign. In addition, Red Sea did not in 2005 or 2006 communicate with the Walberg campaign or any of its agents about Michigan or involve them in any of the CFG's or Club PAC's communications. Lerner Aff. ¶¶ 6-7.

Moreover, while National Research did polling for the Walberg campaign in 2006, it did not conduct any polling or other consulting work for CFG or Club PAC in Michigan in 2005 or 2006. Geller Aff. ¶¶ 5-6. *See also* Keating Aff. ¶ 5 (stating that Red Sea and Basswood Research worked for CFG or Club PAC in Michigan).

⁴ The inclusion of Jamestown in the interconnected vendor charge is a red herring. First, even according to the Complaint, neither Red Sea, Jon Lerner, National Research, nor Adam Geller have any ownership or other control interest in Jamestown. *See, e.g.*, Complaint ¶ 9. Geller simply used to work for Jamestown, leaving in 2002. Affidavit of Adam Geller ¶ 3 [hereinafter "Geller Aff."], attached hereto at Tab C. Red Sea simply on some occasions uses personnel from Jamestown as clerical and administrative assistants without discretionary authority to place media buys. Affidavit of Jonathan Lerner ¶ 4 [hereinafter "Lerner Aff."], attached hereto at Tab B. Red Sea did not use personnel from Jamestown or Jamestown itself for CFG or Club PAC in Michigan. Lerner Aff. ¶ 4. Finally, neither CFG nor Club PAC have directly engaged Jamestown as a vendor in 2005 or 2006. Affidavit of David Keating ¶ 29 [hereinafter "Keating Aff."], attached hereto at Tab A.

Given the lack of control by CFG's and Club PAC's vendors over Jamestown and the fact that ministerial placement of media buys are not captured by the Commission's coordination rules, *see* 68 Fed. Reg. at 437, Respondents do not address the allegations related to Jamestown below.

⁵ From this point forward, all references to Red Sea also include Basswood Research, since they are one and the same. *See* Lerner Aff. ¶ 3.

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Per the regulations, National Research was not a "common vendor" for Michigan in the last 120 days or even the election cycle, although National Research conducted polls for CFG in other areas of the country in 2006. *See* 11 C.F.R. § 109.21(d)(4).

B. The Vendors (Non-Common) Did Not Relay Any Information, Material or Otherwise, to the Walberg Campaign, or Vice-Versa

Even if there was a common vendor, the common vendor standard also requires that the vendor convey specific and material information to or use such information for the third party making the communications. 11 C.F.R. § 109.21(d)(4)(iii). This factor also was not met.

National Research did not relay to CFG, Club PAC, or their agents any information about the Walberg campaign's campaign plans, projects, activities, or needs or use any Walberg information for the benefit of CFG or Club PAC. Geller Aff. ¶¶ 6-10; Keating Aff. ¶¶ 7, 11-15. To ensure, as was its policy, that no information about the Walberg campaign made its way to personnel at CFG and Club PAC, CFG and Club PAC isolated National Research with respect to Michigan, dropping Geller off calls and asking him to leave meetings before commencing any Michigan discussions. Geller Aff. ¶ 6; Keating Aff. ¶ 8. National Research did not even discuss potential Michigan communications with CFG or Club PAC or their agents before working for the Walberg campaign. Geller Aff. ¶ 6.

Given these facts, the activity could not and does not fulfill the specific requirements of paragraph 109.21(d)(4) (or even the spirit of these requirements), which requires, in addition to a common vendor arrangement, the transmittal or use of certain types of material information. 11 C.F.R. ¶ 109.21(d)(4)(iii). Here, the vendors involved in Michigan were not common vendors and neither transmitted any pertinent information.⁶

⁶ The coordination allegations in the Complaint appear to stem from the fact that CFG has employed the services of Mr. Geller and his National Research elsewhere, as reported in CFG IRS reports. The IRS reporting requirements, however, do not request a description of the geographic areas serviced by a particular vendor and, therefore, are of little use vis-à-vis the Commission's specific coordination regulations. The Complaint contains no facts about interconnected vendors that could be based on any other information, and, more importantly, contains no evidence that Mr. Geller or National Research conveyed Walberg information, much less material information, to the CFG or Club PAC or used Walberg information to benefit CFG or Club PAC.

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C. CFG and Club PAC Did Not Otherwise Coordinate Their Communications with the Walberg Campaign or Its Agents

Contrary to naked and unsubstantiated claims of general "coordination" in Michigan found in the Complaint, CFG and Club PAC did not coordinate their communications in Michigan in any way with the Walberg campaign or its agents.

Neither CFG nor Club PAC ran any communications in Michigan at the request or suggestion of the Walberg campaign or its agents. Keating Aff. ¶ 11. CFG and Club PAC's media and polling firm in Michigan, Red Sea, confirms this fact, Lerner Aff. ¶¶ 6-7, and Walberg's pollster, for his part, testifies that he did not request or suggest any communication to CFG, Club PAC, or their agents. Geller Aff. ¶ 9. Moreover, Walberg and its agents were not privy to any CFG or Club PAC communications in order to give or withhold their assent, except for November 2005 PAC endorsement communications identified and reported as in-kind contributions by the PAC.⁷ Geller Aff. ¶ 9; Keating Aff. ¶ 11. Thus, 11 C.F.R. § 109.21(d)(1) was not violated.

Further, except for the November 2005 PAC endorsement communications identified and reported as in-kind contributions by the PAC, the Walberg campaign and its agents were not involved in the development, creation, content, dissemination, or any other aspect of the CFG's and Club PAC's communications in Michigan. Keating Aff. ¶ 12; Lerner Aff. ¶ 7. See 11 C.F.R. § 109.21(d)(2). CFG and Club PAC had no discussions with the Walberg campaign or its agents about any aspect of their Michigan communications. Keating Aff. ¶ 13; Lerner Aff. ¶ 7. There were no discussions between CFG and Club PAC and their agents and the Walberg campaign and its agents with respect to Michigan communications, the campaign's plans, projects, activities, or needs, or CFG's or Club PAC's plans, projects, activities, or needs, although the Walberg campaign did purchase a poll in February 2006 from CFG. Keating Aff. ¶¶ 8, 13-14; Lerner Aff. ¶¶ 6-7. Again, therefore, 11 C.F.R. § 109.21(d)(3) was not violated. Neither CFG nor Club PAC employs a former Walberg campaign staffer or independent contractor. Keating

⁷ As indicated in this section and III C below, Club PAC in 2005 made coordinated communications endorsing Mr. Walberg and Ms. Angle and in 2006 made coordinated communications to invite individuals to a Laffey fundraising luncheon, all of which were identified and reported as PAC in-kind contributions to the respective candidate. See Keating Aff. ¶¶ 11, 12, 24. The fact that Club PAC made in-kind contributions to a campaign does not limit its ability also to make independent expenditures in the same election. See, e.g., MUR 5506.

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Aff. ¶ 15. Thus, the conduct standard for coordination found in 11 C.F.R. § 109.21(d)(5) was not met.

In sum, no coordination took place in Michigan between CFG or Club PAC and the Walberg campaign with respect to CFG issue advocacy or Club PAC independent expenditures.

III. CFG and Club PAC Did Not Coordinate Their Communications with the Angle or Laffey Campaigns or Their Agents

Just as in Michigan, the facts show that CFG and Club PAC did not coordinate their communications in Nevada or Rhode Island with the Angle or Laffey campaigns, respectively. The facts show the same result whether one takes into account the interconnected vendor allegations or the naked assertions of general coordination.

A. There Were No Common Vendors, as Defined in 11 C.F.R. § 109.21(d)(4)(ii)

First, according to Adam Geller, National Research never performed any work for Sharron Angle or Steve Laffey's campaigns. Geller Aff. ¶ 11. The Complaint also does not allege as much. Thus, National Research was not a common vendor between either of these two campaigns and CFG or Club PAC, and, thus, 11 C.F.R. § 109.21(d)(4) could not have been violated on this basis.

Second, apart from a very early April, 2005, poll conducted before Angle was a candidate and which was subsequently purchased per FEC regulations by the Angle campaign from CFG, Angle's media and polling firm, Red Sea, did no work for CFG or Club PAC in Nevada in 2005-2006 after being retained by the Angle campaign in August of 2005. Lerner Aff. ¶ 9. *See also* Keating Aff. ¶ 18 (stating that CFG or Club PAC used National Research for polling and Alfano-Leonardo and Media Ad Ventures for media in Nevada). Similarly, apart from a very early discussion about press speculations about potential Senate candidates (a discussion that pre-dated a Laffey candidacy) and two CFG issue ads about President Bush's plan for Social Security and the death tax, Red Sea did not work for CFG or Club PAC in Rhode Island in 2005-2006. Lerner Aff. ¶¶ 15 & 17. *See also* Keating Aff. ¶ 22 (stating that CFG or Club PAC used Warfield and Co. and Patrick Media for media, National Research for polling, Advantage Inc. for telephone calls, and

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Bluepoint Consulting for direct mail in Rhode Island). Accordingly, Red Sea is not a common vendor as defined in the regulation.⁸

B. The Vendors (Non-Common) Did Not Relay Any Information, Material or Otherwise, to the Angle or Laffey Campaigns, or Vice-Versa

Even assuming *arguendo* that Red Sea has common vendor status in Rhode Island and Nevada, it still did not engage in conduct that would violate the other prongs of the common vendor standard. Specifically, Red Sea never communicated information about the two campaigns' campaign plans, projects, activities, or needs to CFG or Club PAC and did not use such information for the benefit of CFG or Club PAC, much less communicated or used material information. Lerner Aff. ¶¶ 9-13, 16-19. Thus, 11 C.F.R. § 109.21(d)(4)(iii) was not violated. Outside the pre-Angle-candidacy April, 2005, poll in Nevada and the pre-Laffey issue ads and early press speculation in Rhode Island, Red Sea was not privy to any CFG or Club PAC information in either Nevada or Rhode Island, much less to their plans, projects, activities, or needs, and thus could not have conveyed such material information to or used such information for the two campaigns. Lerner Aff. ¶¶ 10-11, 17-18. To ensure that no information about the Angle or Laffey campaigns made its way to personnel at CFG and Club PAC, CFG and Club PAC isolated Red Sea with respect to the two states, dropping Lerner off calls and asking him to leave meetings before any Nevada or Rhode Island discussions commenced. Lerner Aff. ¶¶ 10, 17; Keating Aff. ¶¶ 19, 23.

In short, there was no transfer or use of any information through Red Sea or National Research for the benefit of the campaigns or CFG/Club PAC. National

⁸ Here again, complainant does not bother to research the meaning of common vendor in the regulations. Rather, he makes an allegation based on a misunderstanding of the term. Moreover, even if the CFG and Club PAC and specific candidates did use common vendors in the same geographic areas and at the same time, which they did not, this conduct is not prohibited by the FECA. See 68 Fed. Reg. at 436 ("[The Commission] disagrees with those commenters who contended the proposed standard created any 'prohibition' on the use of common vendors, and likewise disagrees with the commenters who suggested it established a presumption of coordination.") See also 71 Fed. Reg. 33,190, 33,204 (Jun. 8, 2006) (Explanation and Justification for Coordinated Communications) ("The record in this rulemaking indicates that material information regarding candidate and political party 'campaigns, strategy, plans, needs, and activities'—the information that is central to the common vendor and former employee conduct standards—does not remain 'material' for long periods of time during an election cycle.")

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Research cannot even in the broadest sense be said to be a common vendor between the two sides, and Red Sea was isolated from CFG and Club PAC discussions and activities involving Nevada and Rhode Island and thus could not transfer or use the necessary material information for the benefit of the candidates or for CFG or Club PAC. Accordingly, CFG, Club PAC, and all of the vendors involved complied with the Commission's common vendor conduct standard found at 11 C.F.R. § 109.21(d)(4).

C. CFG and Club PAC Did Not Otherwise Coordinate Their Communications with the Angle or Laffey Campaigns or Their Agents

CFG and Club PAC also did not coordinate any communications with the Angle or Laffey campaigns through any of the other conduct factors in the FEC's coordination regulations. In short, there was no request by the Angle or Laffey campaigns or their agents for the creation or distribution of a CFG or Club PAC communications in Nevada or Rhode Island. Keating Aff. ¶¶ 11, 24; Lerner Aff. ¶¶ 13, 19. See 11 C.F.R. § 109.21(d)(1). Neither the Angle campaign, the Laffey campaign, nor the agents of either assented to a CFG or Club PAC communications in Nevada or Rhode Island, except for PAC communications endorsing Ms. Angle in June of 2005 and July 2006 PAC invitations to a Laffey fundraising luncheon, both of which were identified and reported as in-kind contributions. Keating Aff. ¶¶ 11, 24; Lerner Aff. ¶¶ 13, 19. See 11 C.F.R. § 109.21(d)(1). The Angle campaign, the Laffey campaign, and their agents were not involved in the creation, content, or dissemination of CFG or Club PAC communications in Nevada or Rhode Island, except, again, for the June 2005 PAC communications endorsing Ms. Angle and the July 2006 PAC invitations to a Laffey fundraising luncheon, both of which were identified and reported as in-kind contributions, and none of the campaign personnel or agents discussed the campaign projects, plans, activities, or needs with CFG or Club PAC or their agents. Keating Aff. ¶¶ 12-13, 24; Lerner Aff. ¶¶ 12, 18. See also Geller Aff. ¶¶ 12-14 (stating that National Research had no communications or involvement with the Angle or Laffey campaigns). See 11 C.F.R. § 109.21(d)(2)-(3). Finally, neither CFG nor Club PAC employs any former employee or independent contractor of the Angle or Laffey campaigns. Keating Aff. ¶¶ 15, 24. See 11 C.F.R. § 109.21(d)(5).

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In sum, with respect to CFG issue ads and Club PAC independent expenditures, no coordination took place between CFG and Club PAC, on their own or through their agents, and the Angle or Laffey campaigns. 11 C.F.R. § 109.21(d)

IV. Club PAC Internet Activities Were Properly Reported

The Complaint makes claims that CFG made impermissible in-kind contributions to Walberg and other candidates by virtue of Club PAC's Internet independent expenditures, expenditures for which the complainant asserts Club PAC never really paid. Complainant is simply wrong.

Even a cursory review of the facts reveals that CFG did not make any impermissible corporate contribution and that Club PAC did not make any excessive or unreported in-kind contributions to Walberg or any other candidate. Instead, FEC filings, buttressed by Mr. Keating's testimony, *see* Keating Aff. ¶¶ 25-27, show that Club PAC, not CFG, paid for these Internet communications—as the disclaimers on such communications clearly indicate.

A. Club PAC Paid for Its Internet Independent Expenditures

The complainant in this Matter puts forward a citation to one 2006 payment by CFG to PJ Doland Web Design for "web design and maintenance" and then extrapolates from that one payment that Club PAC did not pay for any of its Internet communications. The complainant, however, apparently stopped his research prematurely and pressed on with his Complaint, for additional research easily would have turned up a multitude of information that would have put to rest such baseless allegations about Club PAC's Internet communications.

As seen in Club PAC's FEC filings and in the affidavit of David Keating, Club PAC paid for its Internet independent expenditures. First, on a number of occasions, Club PAC paid PJ Doland Web Design for the design of Internet communications. *See, e.g.*, July 19, 2006, 48-hour Independent Expenditure Report. *See also* Keating Aff. ¶ 27. Club PAC also directly paid Primary Data Solutions for other costs related to Internet activity and, just like with the PJ Doland payment, reported such expenses in a timely and attributed fashion. *See, e.g.*, July 19, 2006, Club PAC 48-hour FEC Independent Expenditure Report. Second, Club PAC created its Internet communications in-house or through PJ Doland Web Design. Keating Aff. ¶ 6. Moreover, on some occasions, Club PAC paid CFG for the costs related to Internet communications as well as for CFG-personnel time involved in

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creating Internet communications. *See, e g*, Club PAC July 26, 2006, 24-hour FEC Independent Expenditure Report. *See also* Keating Aff. ¶¶ 25-126. The payments to CFG were actually made by Club PAC in advance in a lump sum manner. Keating Aff. ¶¶ 25-26. As costs were incurred by the PAC, the amount of the operating expense payments on FEC reports was reduced and the reporting of the expense transferred to the report section for independent expenditures, as explicitly directed in the FEC's instructions for independent expenditures. *Id* *See also* Club PAC August 2006 Monthly FEC Report for examples.

In sum, there is no doubt that Club PAC paid CFG in advance for any and all costs associated with the PAC's Internet communications. Elementary research on the FEC's website, which the complainant did not do, provides ample refutation of any allegations to the contrary. As a result, Club PAC properly paid for and reported its Internet communications.

B. Club PAC Did Not Coordinate Any Internet Independent Expenditures

The Complaint also makes an unsupported allegation that Club PAC's Internet independent expenditures were coordinated with Walberg and other featured candidates. This assertion also is untrue.

Club PAC created its Internet independent expenditures in-house or through web designers. Keating Aff. ¶ 6. To Keating's information and belief, the web designers employed by Club PAC were not used by the Walberg campaign or by any other candidate. *Id* Thus, there is no evidence of common vendorship coordination, and the Complaint in any event makes no allegation of such a type of coordination for the Internet communications.

In addition, Club PAC did not coordinate any of its Internet communications with the featured candidates or their agents. The candidates and agents did not suggest or request the communications, did not assent to the communications, did not discuss their campaign activities, plans, projects or needs with Club PAC, and were not involved in the creation, dissemination, or any other aspect of the communications. Keating Aff. ¶ 28. Therefore, there was no violation of 11 C.F.R. § 109.21. No federal candidate, candidate campaign, nor an agent of the foregoing prepared any of the promotional materials used in the Internet independent expenditures. Keating Aff. ¶ 28.

27044163911

Mr. Lawrence H. Norton, Esq.

November 20, 2006

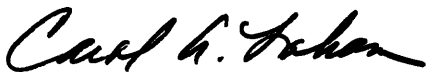
Page 16

The Complaint alleges no specific facts as to coordination of the Internet independent expenditures. Because, as shown above, there was no conduct by CFG, Club PAC or their agents with respect to these communications that violate the conduct standards of the Commission's coordination regulations, 11 C.F.R. § 109.21(d), there can be no finding of coordination.

CONCLUSION

In sum, the bulk of the Complaint simply repeats allegations taken from an already pending enforcement action. A duplicative administrative proceeding on those issues would serve no purpose and would be burdensome, unfair, and inefficient. Those allegations should be dismissed. With respect to the new allegations of coordination, CFG and Club PAC systematically excluded vendors working for candidates from CFG or Club PAC discussions about specific communications. CFG and Club PAC did not coordinate their media or Internet issue ads or independent expenditures through the use of common vendors or otherwise, and Club PAC paid for and properly reported its independent expenditures. The Commission should find that there is no reason to believe such violations occurred and, hence, dismiss the entire Complaint.

Sincerely,



Carol A. Laham
D. Mark Renaud

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27044163913

A

BEFORE THE FEDERAL ELECTION COMMISSION

Washington)
)
District of Columbia)

Matter Under Review 5823

AFFIDAVIT OF DAVID KEATING

DAVID KEATING, first being duly sworn, deposes and says:

1. I am David Keating. I am the Executive Director of the Club for Growth, Inc. ("CFG").

2. I have read the complaint in Matter Under Review 5823 filed by Matt Marsden on behalf of Schwarz for Congress.

3. In 2005 or 2006, CFG disseminated broadcast communications in Michigan about issues relevant to the residents of the state, and some or all of these communications included a reference to or featured the likeness of Tim Walberg or Joe Schwarz. These are referred to as "issue ads."

4. In 2006, CFG's separate segregated fund, Club for Growth, Inc PAC ("Club PAC"), ran independent expenditure broadcast communications in Michigan, supporting Tim Walberg or opposing Joe Schwarz.

5. For the CFG issue ads or the Club PAC independent expenditures in Michigan, the media services of Red Sea LLC ("Red Sea") and/or the polling services of Red Sea's Basswood Research were used. To my knowledge, Jon Lerner now is the only principal of Red Sea.

6. CFG also maintains a website, which addresses issues. Club PAC also pays to make independent expenditures, which have been found at www.clubforgrowth.org. Any Internet communications posted by CFG or Club PAC are created in-house or by P.J. Doland Web Design. To my knowledge, P.J. Doland Web Design has not worked for any candidate committee in 2005 or 2006.

7. I have polled each employee of CFG and Club PAC involved in any issue ads or independent expenditures in Michigan, Nevada, and Rhode Island and have been told that none of the individuals had any conversation with the Walberg, Angle, or Laffey campaigns or any of their agents about the campaigns' plans, projects, activities, or needs as they related to the issue ads or independent expenditures; about the possibility of the Club or Club PAC running issue ads or independent expenditures in the relevant state in 2005 or 2006; or about actual issue ads or independent expenditures run in the relevant state in 2005 or 2006. Any such communication would have been contrary to our

practice and policy. Thus, based on my personal knowledge as well as the information conveyed to me, the statements in this affidavit are true.

8. The Complaint alleges that CFG and Club PAC used National Research for the Michigan issue ads and independent expenditures. Although the services of National Research were used in other states in 2005 and 2006, neither CFG nor Club PAC used National Research for any purpose in Michigan in 2005 or 2006. As soon as National Research became affiliated with the Walberg campaign, CFG and Club PAC, as is our policy, closed off Adam Geller, the principal of National Research, Inc., National Research itself, and any agents from any discussions of Michigan, including portions of meetings related to Michigan and phone calls related to Michigan. Thus, to my knowledge Mr. Geller and his company were not aware of either the CFG budget with respect to issue ads to be run in Michigan or the Club PAC budget with respect to Michigan independent expenditures.

9. CFG made and disseminated its issue advertisements and Club PAC made and disseminated its independent expenditures completely independent of Tim Walberg, his campaign, and the agents of his campaign, including National Research and Adam Geller.

10. The Complaint seems to make other unspecified allegations of coordination. Thus, I am addressing other facts below.

11. Neither CFG nor Club PAC created or disseminated its communications at the suggestion or request of the Walberg campaign or any of its agents. Neither CFG nor Club PAC sought or received assent from the Walberg campaign or any of its agents with respect to the creation or dissemination of any communication, except for the November 2005 PAC communications, identified and reported as PAC in-kind contributions, in which Club PAC endorsed Walberg.

12. Neither the Walberg campaign nor any of its agents was involved in any aspect of the creation, content, or dissemination of any communications by CFG or Club PAC, except for the November 2005 PAC communications, identified and reported as PAC in-kind contributions, in which Club PAC endorsed Walberg.

13. There were no discussions between, on the one hand, CFG and Club PAC and, on the other hand, the Walberg campaign and its agents with respect to CFG or Club PAC communications. Neither the Walberg campaign nor any of its agents conveyed to CFG or Club PAC any of the campaign's campaign plans, projects, activities, or needs.

14. Neither CFG nor Club PAC conveyed to the Walberg campaign or its agents any of the CFG's or Club PAC's plans, projects, activities, or needs.

15. Neither CFG nor Club PAC employs any former employee or independent contractor of the Walberg campaign.

16. In 2006, CFG disseminated broadcast communications in Nevada about issues relevant to the residents of the state, and some or all of these communications included a reference to or featured the likeness of a candidate for Congress from Nevada.

17. In 2006, Club PAC ran independent expenditure broadcast communications in Nevada, supporting Sharron Angle or opposing other candidates in the same race.

18. In Nevada, CFG or Club PAC used National Research for polling and Mark Dion at Alfano-Leonardo and Media Ad Ventures for media. Mr. Dion is a partner of Alfano-Leonardo. Brad Mont is the president and owner of Media Ad Ventures. To my knowledge, Mark Dion, Adam Geller, and Brad Mont and their firms performed no work for the Angle campaign.

19. Although CFG and Club PAC have used Red Sea in other states in 2006, neither CFG nor Club PAC used Red Sea or Basswood Research in 2005 or 2006 in Nevada, except that CFG did pay Basswood Research to conduct a poll in Nevada in early 2005, before Sharron Angle was even a candidate, and the Angle campaign subsequently bought the poll from the Club, per FEC regulations. As is our policy, as soon as Mr. Lerner became affiliated with the Angle campaign, CFG and Club PAC shut out Lerner, Red Sea, Basswood Research, and their agents from any discussions of Nevada, including portions of meetings related to Nevada and phone calls related to Nevada. Thus, to my knowledge, Mr. Lerner and his company were not aware of either the CFG budget with respect to issue ads to be run in Nevada or the Club PAC budget with respect to Nevada independent expenditures.

20. In 2005 and 2006, CFG disseminated broadcast, direct mail, and telephone communications in Rhode Island about issues relevant to the residents of the state, and some or all of these communications included a reference to or featured the likeness of a candidate for Senate from Rhode Island.

21. In 2006, Club PAC ran independent expenditure broadcast communications in Rhode Island, supporting Steve Laffey or opposing Senator Chaffee.

22. In Rhode Island, CFG or Club PAC used Warfield and Co., Thompson Communications and its subdivision Patrick Media for media, National Research for polling, Advantage Inc. for telephone calls, and Bluepoint Consulting for direct mail. Nelson Warfield is the principal of Warfield and Co., John Thompson and his wife own Thompson Communications. Jeff Butzke is the principal of Advantage Inc. Chris Baker is the principal of Bluepoint Consulting. To my knowledge, Nelson Warfield, John Thompson, Jeff Butzke, Adam Geller, and Chris Baker and their firms performed no work for the Laffey campaign.

23. Before Mr. Laffey became a candidate, CFG used Red Sea in February 2005 and July 2005 for issue advertising in Rhode Island, focusing on President Bush's Social Security push and the death tax. Otherwise, neither CFG nor Club PAC used Red Sea or Basswood Research in 2005 or 2006 in Rhode Island. CFG personnel did have

discussions with Jon Lerner in 2005 about press speculation about possible Rhode Island Senate candidates. This discussion, however, took place before Laffey was a candidate and before Red Sea and Basswood Research performed any work for Mr. Laffey's campaign. As soon as Red Sea became affiliated with the Laffey campaign, CFG and Club PAC otherwise closed off Lerner, Red Sea, Basswood Research, and their agents from any discussions of Rhode Island, including portions of meetings related to Rhode Island and phone calls related to Rhode Island. Thus, to my knowledge, Mr. Lerner and his company were not aware of either the CFG budget with respect to issue ads to be run in Rhode Island or the Club PAC budget with respect to Rhode Island independent expenditures.

24. Everything that I stated above in paragraphs 11 to 15 above with respect to the independence of the CFG and Club PAC activity in Michigan vis-à-vis the Walberg campaign is equally true with respect to the independence of the CFG and Club PAC activity in Nevada vis-à-vis the Angle campaign and in Rhode Island vis-à-vis the Laffey campaign, except for those June 2005 Club PAC communications, identified and reported as PAC in-kind contributions, in which Club PAC endorsed Angle and those PAC communications, identified and reported as PAC in-kind contributions, in which Club PAC invited individuals to a July 2006 Laffey fundraising luncheon.

25. The Complaint also addresses CFG and Club PAC payments in connection with Internet communications. For purposes of complying with the Federal Election Commission's corporate reimbursement regulations, Club PAC has made lump sum advance payments to CFG, against which CFG charges the PAC for the fair market value of the use of CFG personnel, supplies, or facilities for Club PAC independent expenditures. Using this draw-down accounting method, typically when the lump sum balance remaining approaches \$10,000, the PAC makes an additional lump sum advance payment to CFG so that the balance in the draw-down account ledger never falls below zero. CFG did not and does not pay for any Club PAC independent expenditures.

26. Club PAC has, in its regular FEC reports, timely reported the lump sum advance payments as well as charges against the lump sum payments for actual costs incurred by the PAC for independent expenditures. This includes the use of web space on CFG's website. These transactions are fully reported on the Club PAC's FEC reports. See Club PAC August 2006 Monthly FEC Report for an example of a lump-sum payment to CFG. See Club PAC July 26, 2006, 24-hour FEC Independent Expenditure Report for an example of payments to CFG charged against the advance lump-sum payment.

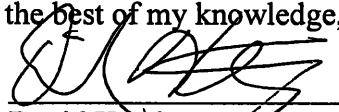
27. Club PAC also pays a web vendor for server space and design/creative work related to Club PAC's Internet independent expenditures. These expenses are also fully reported by the Club PAC. See Club PAC July 19, 2006, 48-hour FEC Independent Expenditure Report for an example of payments to Internet vendors. Club PAC has followed this system for all Walberg and other candidate independent expenditures that it makes through the Internet.

28. The promotional materials that Club PAC has used in its Internet independent communications were not prepared by or made in cooperation with the

benefiting candidates or their agents. Specifically, federal candidates and their agents did not suggest or request the communications and did not assent to the creation or distribution of such communications. Federal candidates and their agents did not discuss their campaign activities, plans, projects or needs as they related to Internet communications with Club PAC or its agents and were not involved in the creation, dissemination, or any other aspect of the Internet communications.

29. Neither CFG nor Club PAC used Jamestown Associates as a vendor in 2005 or 2006 in Michigan, Nevada, or Rhode Island. To our knowledge, CFG's and Club PAC's vendors in these states also did not use Jamestown Associates for purposes of CFG or Club PAC communications. Neither CFG nor Club PAC engaged Jamestown Associates directly as a vendor in 2005 or 2006.

The above information is true and correct to the best of my knowledge, information, and belief.


David Keating

Washington, D.C.

Subscribed to and sworn before me this 20th day of November, 2006


Notary Public

My Commission Expires: 6-14-10



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B

BEFORE THE FEDERAL ELECTION COMMISSION

Washington)
)
District of Columbia)

Matter Under Review 5823

AFFIDAVIT OF JON LERNER

Jon Lerner, first being duly sworn, deposes and says:

1. I am Jon Lerner. Since January 1, 2006, I have been the sole principal of Red Sea, LLC ("Red Sea"). Throughout Red Sea's relationship with the Club for Growth, Inc. ("Club") and the Club for Growth, Inc. PAC ("Club PAC"), I have been the principal contact and principally responsible for advising the Club and Club PAC.

2. Red Sea is a political consulting firm located in Washington, D.C. Red Sea has no employees.

3. Red Sea has provided political consulting services to the Club and Club PAC since 2001. These services have included producing Club and Club PAC communications, performing polling services, and providing the Club with general strategic political consulting. Red Sea conducts polling services under the trade name Basswood Research, but Basswood Research is not a separate entity. Unless specifically mentioned, Basswood Research is included in all statements below that refer to Red Sea.

4. In 2006, Red Sea provided media and creative consulting services in Michigan to the Club and Club PAC for television and radio communications. In 2005-2006, Red Sea also conducted polls in Michigan for Club and Club PAC under its Basswood Research trade name. Although it sometimes uses personnel from Jamestown Associates, an independent media firm, to purchase media time, Red Sea did not use such personnel or Jamestown Associates in Michigan in 2006. When personnel from Jamestown Associates do work for Red Sea, it is in an administrative or clerical capacity only and does not involve any independent decisionmaking. Neither I nor Red Sea has any ownership or other interest in Jamestown Associates.

5. Red Sea did not provide any services to the Walberg campaign or its agents.

6. In 2005 and 2006, Red Sea and I never relayed any information about the Club's or Club PAC's projects, plans, activities, needs, or polls to the Walberg campaign or the campaign's agents, and I never received from the Walberg campaign or its agents any information about the campaign's projects, plans, activities, or needs. I did not communicate at all with the Walberg campaign or its agents about matters pertaining to the 2006 election in Michigan.

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7. I did not coordinate any Club or Club PAC polls or communications with the Walberg campaign or its agents, involve them in the creation or distribution of Club or Club PAC communications, or discuss any aspect of Club or Club PAC activities with them. I did not communicate with the Walberg campaign and did not communicate with the Walberg campaign's agents about Club or Club PAC potential or actual activities in Michigan.

8. In 2005 and 2006, Red Sea conducted polls and performed media consulting services for the Congressional campaign of Sharron Angle in Nevada. Red Sea started working for the Angle campaign in August of 2005. For the Angle work, Red Sea did use some resources of Jamestown Associates for ad placement, although all ads buys were executed in the name of Red Sea.

9. Although Red Sea and I conducted polls and created media for the Club and Club PAC in 2006 in Michigan and other states, Red Sea and I did not conduct any polls, create any communications, or perform any other services for the Club or Club PAC in Nevada in 2005 or 2006 after I began working for the Angle campaign. Before Sharron Angle was even a candidate in Nevada and, accordingly, before Red Sea was employed by the yet-to-exist Angle campaign, Basswood Research conducted a poll for the Club on April 14, 2005, testing real and potential candidates in the Second Congressional District of Nevada. I believe that the Angle campaign purchased this poll from the Club after Ms. Angle declared her candidacy. Subsequent to this poll and after my retention by the Angle campaign, Red Sea and I never had any other communications with the Club or Club PAC about Nevada until after the primary election, which Ms. Angle lost.

10. After Red Sea and I began working for the Angle campaign, I was systematically dropped off Club and Club PAC phone calls and asked to leave Club and Club PAC meetings before any discussions about Nevada began. The Club was meticulous in this respect

11. Neither Red Sea nor I used information from the Angle campaign to assist the Club or Club PAC in any way, including with respect to resource allocation. The inverse is also true. I did not use any Club or Club PAC information to assist the Angle campaign. As stated above, I had no information about the Club's or Club PAC's resource allocation or intentions with respect to Nevada issue ads or independent expenditures.

12. I never once discussed the campaign plans, projects, activities, or needs of the Angle campaign with the Club, Club PAC, or any of their agents. I was not involved in any way in the creation of any Club or Club PAC communication or poll in 2006 in Nevada other than the pre-candidacy April 14, 2005, poll mentioned above

13. I did not request or suggest that the Club or its PAC run advertisements in Nevada, and I did not have any knowledge of any Club or PAC communications before they were disseminated in order to give or withhold my assent.

14. I did not coordinate any Angle polls or communications with the Club or its PAC or their agents, and I did not assist the Club or its PAC to coordinate their communications with the Angle campaign.

15. In 2005 and 2006, Red Sea conducted polls and performed media consulting services for the Senate campaign of Steve Laffey in Rhode Island. Red Sea began working for the Laffey campaign in July of 2005, after Laffey announced a "testing the waters" effort for the U.S. Senate. In March of 2005, before the Laffey campaign engagement, Red Sea conducted a poll for Mr. Laffey about local, state, and federal issues. In Rhode Island, Red Sea used Jamestown Associates as a subvendor for media placement for the Laffey campaign.

16. Neither Red Sea nor I used information from the Laffey campaign to assist the Club or Club PAC in any way, including with respect to resource allocation. The inverse is also true. I did not use any information from the Club or Club PAC to assist the Laffey campaign. As stated above, I had no information about the Club's or Club PAC's allocation or intentions with respect to Rhode Island issue ads or independent expenditures.

17. In early 2005 (before commencing work for the Laffey campaign), I had some discussions with Club personnel about some speculation about Rhode Island candidates in the press. Also, in February and July 2005, before Mr. Laffey became a candidate and retained the services of Red Sea, Red Sea created issue ads for the Club that focused on President Bush's Social Security plan and opposition to the death tax. These ads were disseminated in Rhode Island, among other areas. After being retained by the Laffey campaign in July of 2005, I had no additional discussions with Club or Club PAC personnel or agents about actual or possible Rhode Island activity. As with Nevada, the Club and Club PAC excluded me from phone calls (or portions thereof) and asked me to leave meetings before discussions about Rhode Island began. After being retained by the Laffey campaign, I did not conduct any polls, create any communications, or perform any other services for the Club or Club PAC in Rhode Island in 2005 or 2006.

18. I never once discussed the campaign plans, projects, activities, or needs of the Laffey campaign with the Club, Club PAC, or any of their agents. I was not involved in any way in the creation of any Club or Club PAC communications or polls in Rhode Island after Red Sea began working for the Laffey campaign.

19. I did not request or suggest that the Club or its PAC run advertisements in Rhode Island, and I did not have any knowledge of any Club or PAC communications before they were disseminated in order to give or withhold my assent.

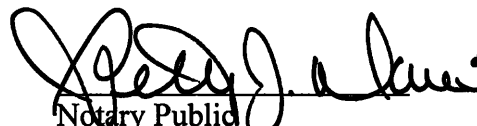
20. I did not coordinate any Laffey polls or communications with the Club or its PAC or their agents, and I did not assist the Club or its PAC to coordinate their communications with the Laffey campaign.

The above information is true and correct to the best of my knowledge, information, and belief.

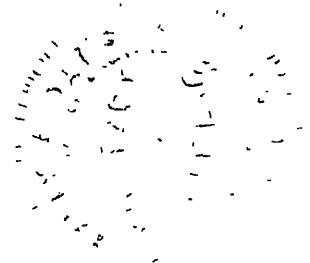

Jon Lerner

Washington, DC

Subscribed to and sworn before me this 20th day of November, 2006


Notary Public

My Commission Expires: September 14, 2009



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27044163924

C

BEFORE THE FEDERAL ELECTION COMMISSION

Holmdel
New Jersey

Matter Under Review 5823

AFFIDAVIT OF ADAM GELLER

ADAM GELLER, first being duly sworn, deposes and says:

1. I am Adam Geller. I am the majority shareholder of National Research, Inc. ("National Research"). My wife is the only other shareholder in National Research.
2. National Research is a polling company located in Holmdel, New Jersey.
3. Before I founded National Research, I was an employee of the media consultant Jamestown Associates from approximately 1997 to 2002. I no longer have any employment or other relationship with Jamestown Associates, although Jamestown Associates is sometimes simultaneously but independently employed by my clients.
4. National Research only has two other employees besides myself, and neither of these employees is authorized to speak with clients about polls or strategy. One employee handles new business development, and the other employee assists me in analyzing polls.
5. In 2006, I conducted polls for Congressional candidate Tim Walberg in the Seventh Congressional District of Michigan. The first poll was in April of 2006.
6. Although I conducted polls for the Club for Growth ("Club") in 2006 in Rhode Island and Nevada, I did not conduct any polls or perform any other services for the Club or its federal PAC in Michigan in 2005 or 2006. I never had any discussions with Club or PAC personnel about actual or possible Michigan activity—even before I began working for the Walberg campaign. The Club and its PAC dropped me from phone calls and asked me to leave meetings before any discussions of Michigan commenced. The Club was thorough in keeping me from learning any information about Michigan.
7. I never once discussed the campaign plans, projects, activities, or needs of the Walberg campaign with the Club, the Club's federal PAC, or any of their agents. I was not involved in any way in the creation of any Club communications or polls in Michigan or any communications or polls conducted or disseminated by the Club's federal PAC.
8. I did not use any information from the Walberg campaign for the benefit of the Club or its PAC, including with respect to resource allocation. I also did not use

any information from the Club or Club PAC to benefit the Walberg campaign. As stated above, I had no information regarding the Club's or Club PAC's intended resource allocation in Michigan.

9. I did not request or suggest that the Club or its PAC run advertisements in Michigan, and I did not have any knowledge of any Club or PAC communications before they were disseminated in order to give or withhold my assent.

10. I did not coordinate any Walberg polls or communications with the Club or its PAC, and I did not assist the Club or its PAC to coordinate their communications with the Walberg campaign.

11. I did polling in 2005 and 2006 for the Club in Nevada and Rhode Island. I did not conduct any polls or perform any other services for federal candidates in those states in 2005 or 2006.

12. In Nevada, I never relayed any information about the Club's projects, plans, activities, needs, or polls (or those of its PAC) to the campaign of Sharon Angle or the campaign's agents, and I never received from the Angle campaign or its agents any information about the campaign's projects, plans, activities, or needs. I did not communicate at all with the Angle campaign. I did not communicate with any of the Angle campaign's agents about Nevada.

13. In Rhode Island, I never relayed any information about the Club's projects, plans, activities, needs, or polls (or those of its PAC) to the campaign of Steve Laffey or the campaign's agents, and I never received from the Laffey campaign or its agents any information about the campaign's projects, plans, activities, or needs. I did not communicate at all with the Laffey campaign. I did not communicate with any of the Laffey campaign's agents about Rhode Island.

I never relayed any information about the Club's projects, plans, activities, needs, or polls (or those of its PAC) to the campaign of Sharon Angle or the campaign's agents, and I never received from the Angle campaign or its agents any information about the campaign's projects, plans, activities, or needs. I did not communicate at all with the Angle campaign. I did not communicate with any of the Angle campaign's agents about Nevada.

I never relayed any information about the Club's projects, plans, activities, needs, or polls (or those of its PAC) to the campaign of Steve Laffey or the campaign's agents, and I never received from the Laffey campaign or its agents any information about the campaign's projects, plans, activities, or needs. I did not communicate at all with the Laffey campaign. I did not communicate with any of the Laffey campaign's agents about Rhode Island.

14. I did not coordinate any Club polls or communications with the Angle or Laffey campaigns or their agents, involve them in the creation or distribution of Club or Club PAC communications, or discuss any aspect of Club or Club PAC activities with them. I did not coordinate any polls or communications of the Club's PAC with the Angle or Laffey campaigns.

The above information is true and correct to the best of my knowledge, information, and belief.


Adam Geller

Holmdel, New Jersey

Subscribed to and sworn before me this 16th day of November, 2006


Notary Public

My Commission Expires: _____

ANTHONY R. CAMBRIA, ESQ.
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Dec. 8, 2006

Subscribed to and sworn before me this 16th day of November, 2006

27044163928

D

Tab D

Excerpts from 11 C.F.R. § 109.21

The Conduct Standard

The conduct standard requires that any one of the following types of conduct be met:

(1) *Request or suggestion.*

(i) The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or

(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion.

(2) *Material involvement.* This paragraph, (d)(2), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. A candidate, authorized committee, or political party committee is materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) *Substantial discussion.* This paragraph, (d)(3), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate's authorized committee, the

candidate's opponent, the opponent's authorized committee, or a political party committee. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

(5) *Former employee or independent contractor.* Both of the following statements in paragraphs (d)(5)(i) and (d)(5)(ii) of this section are true:

(i) The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days; and

(ii) This paragraph, (d)(5)(ii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source. That former employee or independent contractor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

11 C.F.R. § 109.21(d)(1)-(3), (5).